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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 13, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRI-CITY RAILROAD COMPANY,
LLC, a Washington limited liability
company,

Plaintiff,

v.

PREFERRED FREEZER SERVICES OF
RICHLAND, LLC, a Delaware limited
liability company

Defendant.

No. 2:19-CV-00045-SAB

**ORDER ADDRESSING
PENDING MOTIONS**

Before the Court are Plaintiff's Motion for Partial Summary Judgment, ECF No. 70; Defendant's Motion for Summary Judgment, ECF No. 81; Defendant's Motion for Summary Judgment to Dismiss Plaintiff's Amended Complaint, ECF No. 85, and Plaintiff's Motion to Strike, ECF No. 103. The telephonic hearing was held on the motions on July 9, 2020. Ryan W. Reynolds represented Plaintiff and Mark B. Tuvim represented Defendant.

Background Summary

Defendant Preferred Freezer Services of Richland owns a freezer warehouse facility near Richland, Washington. The facility includes a railyard. In 2016, Plaintiff Tri-City Railroad entered into a "Rail Service Management and Track Use Agreement" with Defendant, in which Plaintiff agreed to provide switching

ORDER ADDRESSING PENDING MOTIONS ~ 1

1 services at the railyard. In exchange, Plaintiff would receive exclusive use of the
 2 tracks. Plaintiff asserts Defendant breached the Agreement by failing to facilitate
 3 third party payments to it for use of the tracks and by separately leasing the tracks
 4 to others. Defendant argues Plaintiff breached the Agreement and is bringing a
 5 breach of contract counterclaim.

6 Motion Standard

7 Summary judgment is appropriate “if the movant shows that there is no
 8 genuine dispute as to any material fact and the movant is entitled to judgment as a
 9 matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless
 10 there is sufficient evidence favoring the non-moving party for a jury to return a
 11 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
 12 (1986). The moving party has the initial burden of showing the absence of a
 13 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).
 14 If the moving party meets its initial burden, the non-moving party must go beyond
 15 the pleadings and “set forth specific facts showing that there is a genuine issue for
 16 trial.” *Anderson*, 477 U.S. at 248.

17 In addition to showing there are no questions of material fact, the moving
 18 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
19 Wash. Law Sch., 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled
 20 to judgment as a matter of law when the non-moving party fails to make a
 21 sufficient showing on an essential element of a claim on which the non-moving
 22 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
 23 cannot rely on conclusory allegations alone to create an issue of material fact.
 24 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

25 When considering a motion for summary judgment, a court may neither
 26 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
 27 is to be believed, and all justifiable inferences are to be drawn in his favor.”
 28 *Anderson*, 477 U.S. at 255.

When parties submit cross-motions for summary judgment, each motion must be considered on its own merits. *Fair Housing Council of Riverside Cty., Inc. v. Riverside Tow*, 249 F.3d 1132, 1136 (9th Cir. 2001) (citation omitted). In doing so, the Court must review the evidence submitted in support of each cross-motion. *Id.* Also, while the filing of cross-motions for summary judgment suggests both parties are asserting that there are no uncontested issues of material fact, the court must independently determine whether disputed issues of material fact are present. *Id.*

Applicable Law

Washington follows the objective manifestation theory of contracts, focusing on the objective manifestation of the agreement, rather than the less precise subjective intent of the parties. *Hearst Comm'ns, Inc. v. Seattle Times Co.*, 154 Wash. 2d 493, 503 (2005). When interpreting a contract under Washington law, the Court attempts to “ascertain the parties’ intentions and give effect to their intentions.” *Taylor-Edwards Warehouse & Transfer Co. of Spokane, Inc. v. Burlington N., Inc.*, 715 F.2d 1330, 1334 (9th Cir. 1983) (citing *Jones v. Hollingsworth*, 88 Wash. 2d 322, 326 (1977)).

Words in a contract are given their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. *Hearst Comm'ns*, 154 Wash.2d at 504. Courts should interpret what was written, not what was intended to be written, *id.*, and interpret contract language to give reasonable, fair, just, and effective meaning to all manifestations of intention. *Pub. Util. Dis. No. 1 of Lewis Cty. v. Wash. Pub. Power Supply Syst.*, 104 Wash. 2d 353 (1985). Under Washington law, extrinsic evidence is only admissible “as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties’ intent.” *Berg v. Hudesman*, 115 Wash. 2d 657, 667 (1990). When a contract is unambiguous and its formation is undisputed, the interpretation of the contract is a question of law that is appropriate for resolution on summary

1 judgment. *Id.* On the other hand, summary judgment is improper if the parties' 2 written contract, viewed in light of the parties' other objective manifestations, has 3 two or more reasonable but competing meanings. *Diamond B. Constructors, Inc. v.* 4 *Granite Falls Sch. Dist.*, 117 Wash. App 157, 161 (2003).

5 Under Washington law, a party must prove three elements to establish a 6 breach of contract claim: (1) the existence of a valid contract; (2) a breach of that 7 contract; and (3) damages. *Univ. of Wash. v. Gov. Empl. Ins. Co.*, 200 Wash. App. 8 455, 467 (2017). A material breach is one that substantially defeats a primary 9 function of the contract. *Top Line Builders, Inc. v. Bovenkamp*, 179 Wash. App. 10 794, 808 (2014). The materiality of a breach is a question of fact. *Id.*

11 Analysis

12 Previously, the Court held there is no dispute that the 2016 Agreement 13 grants Plaintiff exclusive use of Defendant's tracks. ECF No. 66. However, there 14 were questions of material fact regarding what that means. *Id.* Plaintiff argues 15 Paragraph 4a and Paragraph 13 of the 2016 Agreement impose a duty on 16 Defendant, as owner of the tracks, to enforce the exclusivity clause by facilitating 17 payments from third party users of their tracks. Defendant responds that Plaintiff 18 waived any claims with respect to the exclusivity clause because it acquiesced to 19 the presence of the third parties on the tracks.

20 While it is clear the 2016 Agreement does not explicitly require Defendant 21 to take steps to facilitate payments from third-party users of the track, the parties' 22 intention regarding whether this clause imposes a duty on Defendant depends, in 23 part, on the meaning of "exclusive use of the tracks." The Court has already held 24 this is a question for the jury to decide. Similarly, the intent of the parties with 25 respect to the scope of the duty of good faith and cooperation set forth in Paragraph 26 13 is not clear and will need to be determined by the jury. Similarly, genuine issues 27 of material fact exist as to whether Plaintiff voluntarily consented to the presence 28 of third parties' railcars. For these reasons, Plaintiff's Motion for Partial Summary

1 Judgment, ECF No. 70, is denied.

2 Genuine issues of material fact exist as to whether Plaintiff materially breached
3 the 2016 Agreement. As such, Defendant's Motion for Summary Judgement on its
4 counter breach of contract claim, ECF No. 81, is denied.

5 With respect to Defendant's Motion for Summary Judgment to Dismiss
6 Plaintiff's Amended Complaint, the Court cannot determine as a matter of law that
7 Plaintiff's breach of contract and trespass claims should be dismissed because
8 genuine issues of material fact exist that preclude summary judgment. The Court
9 agrees, however, that Plaintiff's Second Request for Declaratory Judgment claim is
10 moot and Plaintiff's Fourth Request for Declaratory Judgment is premature. As
11 such, the Court grants Defendant's Motion for Summary Judgment to Dismiss
12 Plaintiff's Amended Complaint, ECF No. 85, with respect to Plaintiff's Second
13 Request for Declaratory Judgment and Fourth Request for Declaratory Judgment.

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28 Accordingly, **IT IS HEREBY ORDERED:**

1 1. Plaintiff's Motion for Partial Summary Judgment, ECF No. 70, is

2 **DENIED.**

3 2. Defendant's Motion for Summary Judgment, ECF No. 81, is

4 **DENIED.**

5 3. Defendant's Motion for Summary Judgment to Dismiss Plaintiff's
6 Amended Complaint, ECF No. 85, is **GRANTED**, in part, and **DENIED**, in part,

7 4. Plaintiff's Motion to Strike, ECF No. 103 is **DENIED**, with leave to

8 renew.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
10 and forward copies to counsel.

11 **DATED** this 13th day of July 2020.



15 Stanley A. Bastian

16 Stanley A. Bastian
17 United States District Judge
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